

AT

TRANSMITTAL OF APPEAL BRIEF (Small Entity)

Docket No.
8027.00015

In Re Application Of Mark Edward Marriott et al.

Application No.	Filing Date	Examiner	Customer No.	Group Art Unit	Confirmation No.
09/954,900	September 18, 2001	M. Rosenbaum	010534	3725	8599

Invention: SPRING ASSIST ASSEMBLY FOR INFEED PAN OF WOOD CHIPPER

COMMISSIONER FOR PATENTS:

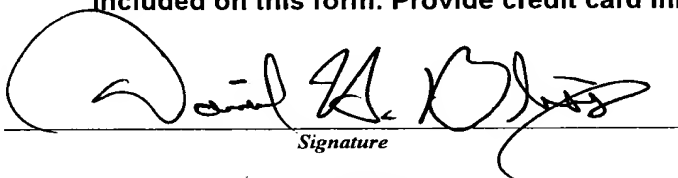
Transmitted herewith is the Appeal Brief in this application, with respect to the Notice of Appeal filed on:

☒ Applicant claims small entity status. See 37 CFR 1.27

The fee for filing this Appeal Brief is: \$250.00

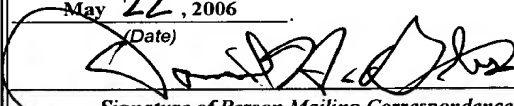
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Signature

Dated: May 22, 2006

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I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on May <u>22</u> , 2006 (Date)  Signature of Person Mailing Correspondence Daniel H. Bliss Typed or Printed Name of Person Mailing Correspondence

CC:



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Art Unit: 3725)
)
Examiner: M. Rosenbaum)
)
Applicant(s): Mark Edward Marriott et al.)
)
Serial No.: 09/954,900)
)
Filing Date: September 18, 2001)
)
For: SPRING ASSIST ASSEMBLY FOR INFEED)
PAN OF WOOD CHIPPER)
_____)

APPEAL BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

By Notice of Appeal filed March 21, 2006, Applicants have appealed the Final Rejection dated December 21, 2005 and submit this brief in support of that appeal.

REAL PARTY IN INTEREST

The real party in interest is the Assignee, Bandit Industries, Inc.

RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences regarding the present application.

STATUS OF CLAIMS

Claims 1 through 24 have been rejected.

Claims 1 through 24 are being appealed.

CERTIFICATE OF MAILING: (37 C.F.R. 1.8) I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the U.S. Postal Service with sufficient postage as First Class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on May 22, 2006, by Daniel H. Bliss.

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STATUS OF AMENDMENTS

An Amendment Under 37 C.F.R. 1.116 was filed on March 21, 2006 in response to the Final Office Action dated December 21, 2005. An Advisory Action dated April 4, 2006 indicated that the Amendment under 37 C.F.R. 1.116 had been considered, but would not place the application in a condition for allowance because of reasons of record. Upon the filing of an appeal, there was no indication that the Amendment under 37 C.F.R. 1.116 would be entered. A Notice of Appeal, along with the requisite fee, was filed on March 21, 2006. The Appeal Brief, along with the requisite fee, is submitted herewith.

SUMMARY OF THE CLAIMED SUBJECT MATTER

The claimed subject matter is directed to a wood chipper. The wood chipper includes a movable infeed pan. [The wood chipper 12 includes an infeed hopper assembly 14 having an inlet 16 to allow wood material to enter the wood chipper 12. The wood chipper 12 may include a feed wheel assembly 17 disposed between and adjacent to the infeed hopper assembly 14 and a cutting assembly 18 for rotation about a horizontal axis adjacent to the feed wheel assembly 17. The wood chipper 12 further includes an infeed pan 24 disposed adjacent the inlet 16 of the infeed hopper assembly 14. The infeed pan 24 has a base wall 26 and a pair of opposed side walls 28 extending generally perpendicular to the base wall 26. The base wall 26 is generally rectangular in shape and the side walls 28 are generally triangular in shape. The infeed pan 24 is pivotally connected to the infeed hopper assembly 14 by suitable means such as a pin 30 extending laterally from each side wall 28 and disposed in a sleeve 32 extending laterally from each side of the infeed hopper assembly 14.] (Figures 1 through 3; Specification, page 3, lines 14 through 26 and page 4, line 23 through page 5, line 8).

The wood chipper also includes at least one assist mount connected to the wood chipper. [The assist assembly 10 includes at least one, preferably a plurality of assist brackets or mounts 36 connected to the infeed hopper assembly 14 and spaced laterally along the inlet 16 thereof. Each assist mount 36 has at least one, preferably a pair of side members 38 spaced laterally along a lower member 40 of the infeed hopper assembly 14. Each assist mount 36 also has a support member 42 preferably extending laterally between the side members 38 and through corresponding apertures 44 in each of the side members 38 or from one side member 38.] (Figures 1 through 3; Specification, page 5, line 10 through page 6, line 3).

The wood chipper further includes at least one assist member connected to the assist mount and to operatively engage the infeed pan to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator. [The assist assembly 10 is used to assist the operator in handling the bulk weight of the infeed pan 24 when the infeed pan 24 is raised or lowered. The assist assembly 10 also includes at least one, preferably a plurality of assist members, generally indicated at 46, to counterforce the bulk weight of the infeed pan 24. The assist members 46 may be of a type such as a spring, pneumatic damper, or gas-assisted cylinders. One of the assist members 46 is associated with one of the assist mounts 36. In one embodiment, the assist member 36 is a spring 47. Each spring 47 may be of a coil type having a plurality of turns or coils 48 and a first end 50 extending outwardly from one end of the coils 48 and a second end 52 extending outwardly from the other end of the coils 48. The second end 52 extends outwardly a greater distance than the first end 50. Preferably, each spring 47 is pre-formed into a general "L" shape. Each spring 47 has the coils 48 disposed about the support member 42 and the first end 50 engaging the lower member 40 of the wood chipper 12 and the second end 52

operatively engaging the infeed pan 24. The first end 50 engages or contacts a lower surface 54 of the lower member 40 such that the first end 50 is generally horizontal or parallel to the lower surface 54. The assist assembly 10 may include a retainer 58 having an aperture 56 extending therethrough. The retainer 58 extends generally perpendicular from the base wall 26 of the infeed pan 24. The second end 52 of the spring 47 extends through the aperture 56 of the retainer 58 such that the second end 52 is spaced from the base wall 26 of the infeed pan 24. The ends 50 and 52 of the spring 47 form a general "L" shape so that as the second end 52 is rotated away and relative to the first end 50, a counter force or pressure is formed to hold some of the weight of the infeed pan 24 and yet allow the infeed pan 24 to lower into an operating position.] (Figures 1 through 3; Specification, page 6, line 13 through page 7, line 22).

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The grounds of rejection to be reviewed on appeal is whether the claimed invention of claims 1 through 24 is obvious and unpatentable under 35 U.S.C. § 103 over allegedly admitted prior art in view of either Neagu (U.S. Patent No. 4,836,736), Jones (U.S. Patent No. 2,656,563), or Holzhauser et al. (U.S. Patent No. 4,520,977).

ARGUMENT

Claims Not Obvious or Unpatentable Under 35 U.S.C. § 103

As to patentability, 35 U.S.C. § 103 provides that a patent may not be obtained:

If the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Id.

The United States Supreme Court interpreted the standard for 35 U.S.C. § 103 in Graham v. John Deere, 383 U.S. 1, 148 U.S.P.Q. 459 (1966). In Graham, the Court stated that under 35 U.S.C. § 103:

The scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background, the obviousness or non-obviousness of the subject matter is determined. 148 U.S.P.Q. at 467.

Using the standard set forth in Graham, the scope and content of the prior art relied upon by the Examiner will be determined.

The Background of the Invention section of the present application discloses an example of a wood chipper such as in U.S. Patent No. 5,988,539 to Morey. In this patent, the wood chipper 10 includes an infeed hopper 20, feed wheel system 48, and a cutting assembly having a rotatable disc with at least one knife or blade 34 for chipping the wood entering the wood chipper 10 and reducing it to wood chips. Typically, the wood chipper 10 includes an infeed pan pivotally connected to the infeed hopper 20, which is raised and lowered by an operator to allow wood material to be placed on the infeed pan before entering the infeed hopper 20.

U.S. Patent No. 4,836,736 to Neagu discloses a level ride liftgate with ramping action platform. A liftgate 10 is adapted for operative attachment to a truck 20. The liftgate 10 includes a main frame 12 and a foldable platform 34. Two pairs of plates 178, 180 project from the platform 34. Corresponding pairs of plates 176 are operatively attached to the main frame 12 and are disposed near the plates 178, 180. A coaxial hole is formed through each group of plates 176, 178, 180, and a pin 72 extends through each coaxial hole such that the

platform 34 is pivotally attached to the frame 12. A torsion spring 186 is disposed about each pin 72 to thereby counterbalance the weight of the platform 34.

U.S. Patent No. 2,656,563 to Jones discloses a counterbalanced hinge. The hinge has two hinged members 10, 12. The hinged members 10, 12 are pivotally joined by a pintle 20. A supplemental lever 19 is attached to the hinged member 12 and is also pivotally supported by the pintle 20. The lever 19 includes a cam surface 18. A bracket 13 is disposed below the cam surface 18 of the lever 19. A tube member 16 is slidably mounted on the bracket 13, and a coil spring 14 biases the tube member 16 toward the cam surface 18. In operation, as the hinge member 12 is pivoted in one direction, the cam surface 18 slidably moves the tube member 16 against the biasing force of the coil spring 14 downward on the bracket 13. As the hinge member 12 is pivoted in an opposite direction, the biasing force of the coil spring 14 moves the tube member 16 upward on the bracket 13 and forces the tube member 16 against the cam surface 18. As such, the biasing force of the coil spring 14 causes the tube member 16 to partially support the hinge member 12 as it pivots in both directions.

U.S. Patent No. 4,520,977 to Holzhauser et al. discloses an apparatus for mounting a document feeder on a copier/duplicator. A document feeder 10 is pivotally mounted on a copier 12 by a mounting apparatus 14. The mounting apparatus 14 includes a frame member 24, and a tension spring 72 is mounted therein. One end of the tension spring 72 is attached to the frame member 24, and the opposite end of the tension spring 72 is attached to the document feeder 10. The tension spring 72 counterbalances the weight of the document feeder 10 as it pivots.

Claims 1 through 4

In contradistinction, claim 1 claims the invention as a wood chipper (12) including a movable infeed pan (24) and at least one assist mount (36) connected to the wood chipper (12). The wood chipper (12) also includes at least one assist member (46) connected to the assist mount (36) and to operatively engage the infeed pan (24) to assist an operator in moving a bulk weight of the infeed pan (24) when the infeed pan (24) is raised to a generally vertical position and lowered to a generally horizontal position by the operator.

The United States Court of Appeals for the Federal Circuit (CAFC) has stated in determining the propriety of a rejection under 35 U.S.C. § 103(a), it is well settled that the obviousness of an invention cannot be established by combining the teachings of the prior art absent some teaching, suggestion or incentive supporting the combination. See In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 227 U.S.P.Q. 657 (Fed. Cir. 1985); ACS Hospital Systems, Inc. v. Montefiore Hospital, 732 F.2d 1572, 221 U.S.P.Q. 929 (Fed. Cir. 1984). The law followed by our court of review and the Board of Patent Appeals and Interferences is that “ [a] prima facie case of obviousness is established when the teachings from the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary skill in the art.” In re Rinehart, 531 F.2d 1048, 1051, 189 U.S.P.Q. 143, 147 (C.C.P.A. 1976). See also In re Lalu, 747 F.2d 703, 705, 223 U.S.P.Q. 1257, 1258 (Fed. Cir. 1984) (“In determining whether a case of prima facie obviousness exists, it is necessary to ascertain whether the prior art teachings would appear to be sufficient to one of ordinary skill in the art to suggest making the claimed substitution or other modification.”)

As to the differences between the prior art and the claims at issue, the Background of the Invention section of the present application merely discloses a wood chipper having an infeed pan pivotally connected to an infeed hopper, which is raised and lowered by an operator to allow wood material to be placed on the infeed pan before entering the infeed hopper. The Background of the Invention section lacks at least one assist member connected to an assist mount and to operatively engage an infeed pan to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator. In the wood chipper of the Background of the Invention section, there is no assist member to assist an operator in moving the infeed pan.

Neagu '736 merely discloses a level ride liftgate with ramping action platform having a torsion spring disposed about each pin to thereby counterbalance the weight of the platform. Neagu '736 lacks at least one assist member connected to an assist mount to operatively engage an infeed pan to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator. In Neagu '736, there is no infeed pan.

Jones '563 merely discloses a counterbalanced hinge in which a biasing force of a coil spring causes a tube member to partially support a hinge member as it pivots in both directions. Jones '563 lacks at least one assist member connected to an assist mount to operatively engage an infeed pan to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator. In Jones '563, there is no infeed pan.

Holzhauser et al. '977 merely discloses an apparatus for mounting a document feeder on a copier/duplicator having a tension spring that counterbalances the weight of the

document feeder as it pivots. Holzhauser et al. '977 lacks at least one assist member connected to an assist mount to operatively engage an infeed pan to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator. In Holzhauser et al. '977, there is no infeed pan.

As to the level of ordinary skill in the pertinent art, the Background of the Invention section of the present application merely discloses a wood chipper having an infeed pan pivotally connected to an infeed hopper, which is raised and lowered by an operator. However, there is absolutely no teaching of a level of skill in the wood chipper art to include at least one assist mount connected to the wood chipper and at least one assist member connected to the assist mount to operatively engage the infeed pan to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator. The wood chipper of the Background of the Invention section of the present application fails to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position. Further, there is no motivation in the wood chipper art for modifying the wood chipper of the Background of the Invention section to assist an operator in moving a bulk weight of the infeed pan. Neagu '736, Jones '563, or Holzhauser et al. '977 are non-analogous and one in the wood chipper art would not look to these patents for motivation because they are not in the field in which the problem lies. There is no suggestion or motivation for combining the wood chipper of the Background of the Invention section and Neagu '736, Jones '563, or Holzhauser et al. '977 together.

The United States Court of Appeals for the Federal Circuit (CAFC) has stated that in order to properly rely on a reference under 35 U.S.C. § 103, the reference must be analogous prior art, meaning that “the reference must either be in the field of applicant’s endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned.” In re Oetiker, 977 F.2d 1443, 1446 (Fed. Cir. 1992). “A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor’s endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor’s attention in considering his problem.” In re Clay, 966 F.2d 656,659 (Fed. Cir. 1992).

The Examiner states that the Neagu ‘763 and Holzhauser et al. ‘977 patents are analogous arts “since their springs are being used to counterbalance the weight of movable members.” However, these patents address problems wholly unrelated to chipping wood. Neagu ‘763 addresses the lifting of articles into a bed of a truck, and Holzhauser et al. ‘977 addresses the movement of a document feeder of a copier. Neither the lifting of articles into a bed of a truck nor the movement of a document feeder is reasonably pertinent to the field of wood chipping.

Further, one skilled in the art would look to the wood chipper art and not look to the weight assist area in general to solve the problem. In the present application, Applicants were faced with the problem of an infeed pan that was heavy in weight, which makes it difficult for an operator to raise and lower the infeed pan. In addition, larger size wood chippers have heavier infeed pans, which may result in damage to the wood chipper if not raised and lowered smoothly. Applicants would not have looked to the weight assist area in general to solve their problem because neither the lifting of articles into a bed of a truck of

Neagu '763 nor the movement of a document feeder of Holzhauser et al. '977 would solve the problem of raising and lowering an infeed pan of a wood chipper that is heavy in weight. Therefore, Applicants respectfully submit that Neagu '763 and Holzhauser et al. '977 are each nonanalogous art and unrelated to the subject matter of independent claim 1.

A rejection based on §103 must rest on a factual basis, with the facts being interpreted without a hindsight reconstruction of the invention from the prior art. Thus, in the context of an analysis under § 103, it is not sufficient merely to identify one reference that teaches several of the limitations of a claim and another that teaches several limitations of a claim to support a rejection based on obviousness. This is because obviousness is not established by combining the basic disclosures of the prior art to produce the claimed invention absent a teaching or suggestion that the combination be made. Interconnect Planning Corp. v. Fiel, 774 F.2d 1132, 1143, 227 U.S.P.Q. (BNA) 543, 551 (Fed. Cir. 1985); In Re Corkhill, 771 F.2d 1496, 1501-02, 226 U.S.P.Q. (BNA) 1005, 1009-10 (Fed. Cir. 1985). The relevant analysis invokes a cornerstone principle of patent law:

That all elements of an invention may have been old (the normal situation), or some old and some new, or all new, is . . . simply irrelevant. Virtually all inventions are combinations and virtually all are combinations of old elements. Environmental Designs v. Union Oil Co. of Cal., 713 F.2d 693, 698 (Fed. Cir. 1983) (other citations omitted).

A patentable invention . . . may result even if the inventor has, in effect, merely combined features, old in the art, for their known purpose without producing anything beyond the results inherent in their use. American Hoist & Derek Co. v. Sowa & Sons, Inc., 220 U.S.P.Q. (BNA) 763, 771 (Fed. Cir. 1984) (emphasis in original, other citations omitted).

As the Court of Appeals for the Federal Circuit recently noted, “[w]hen a rejection depends upon a combination of prior art references, there must be some teaching, suggestion, or motivation to combine the references.” Ecolochem, Inc. v. Southern Calif. Edison, 56 U.S.P.Q. 2d 1065, 1073 (Fed. Cir. 2000). Here, there is simply no motivation provided in any of the allegedly admitted prior art, Neagu ‘736, Jones ‘563, or Holzhauser et al. ‘977 to combine any of their teachings.

The references, if combinable, fail to teach or suggest the combination of a wood chipper including a movable infeed pan, at least one assist mount connected to the wood chipper, and at least one assist member connected to the assist mount and to operatively engage the infeed pan to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator as claimed by Applicants. The Examiner has failed to establish a case of prima facie obviousness.

The present invention sets forth a unique and non-obvious combination of a wood chipper having at least one assist mount connected to the wood chipper and at least one assist member connected to the assist mount to operatively engage the infeed pan. Advantageously, the assist assembly assists the operator in handling the bulk weight of the infeed pan when it is raised or lowered.

Obviousness under § 103(a) is a legal conclusion based on factual evidence (In re Fine, 837 F.2d 1071, 1073, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988)), and the subjective opinion of the Examiner as to what is or is not obvious, without evidence in support thereof, does not suffice. The Examiner may not, because he/she doubts that the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in the factual basis. See In re Warner, 379 F. 2d 1011, 154 U.S.P.Q. 173 (C.C.P.A. 1967). Because the

Examiner has not provided a sufficient factual basis that is supportive of his/her position (see In re Warner, 379 F.2d 1011, 1017, 154 U.S.P.Q. 173, 178 (C.C.P.A. 1967), cert. denied, 389 U.S. 1057 (1968)), the rejection of claim 1 is improper.

Against this background, it is submitted that the present invention of claim 1 is not obvious in view of the allegedly admitted prior art, Neagu '736, Jones '563, and/or Holzhauser et al. '977. The references fail to teach or suggest the combination of a wood chipper of claim 1. Therefore, it is respectfully submitted that claim 1 is not obvious and is allowable over the rejection under 35 U.S.C. § 103.

The law is clear that a claim in dependent form shall be construed to incorporate by reference all of the limitations of the claim to which it refers. 35 U.S.C. § 112, ¶ 4. Dependent claims 2 through 4 perfect and further limit independent claim 1. Claim 2 defines that the at least one assist member comprises a spring. Claim 3 defines that the at least one assist mount comprises at least one side member extending from an infeed hopper assembly of the wood chipper. Claim 4 defines that the at least one assist mount further comprises a support member extending from the at least one side member, the at least one assist member being connected to the at least one support member. Contrary to the Examiner's opinion, the terms "assist member" and "assist mount" are not merely other names for a spring and its associated support, but are terms consistent with that disclosed in the specification. The claim language is to be read in view of the specification as it would be interpreted by one of ordinary skill in the art. In re Morris, 127 F.3d 1048, 1053-54, 44 U.S.P.Q.2d 1023, 1027 (Fed. Cir. 1997). As such, there is no suggestion in the allegedly admitted prior art, Neagu '736, Jones '563, or Holzhauser et al. '977 to desire the modification to arrive at the claimed subject matter of claims 2 through 4. The mere fact that the prior art could be modified in a manner to arrive at the claimed subject

matter does not make such a modification obvious unless the prior art suggested the desirability of the modification. See In re Gordon, 773 F.2d 900, 902, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984). Based on the above, it is respectfully submitted that claims 2 through 4 are not obvious and are allowable over the rejection under 35 U.S.C. § 103.

Claims 5 through 16

As to independent claim 5, claim 5 claims the invention as a wood chipper (12) including a movable infeed pan (24) and at least one spring mount (36) connected to the wood chipper (12). The wood chipper (12) also includes at least one spring (47) connected to the spring mount (36) and to operatively engage the infeed pan (24) to assist an operator in moving a bulk weight of the infeed pan (24) when the infeed pan (24) is raised to a generally vertical position and lowered to a generally horizontal position by the operator.

The references cited, either alone or in combination, do not teach or suggest the claimed invention of claim 5. Specifically, the Background of the Invention section of the present application merely discloses a wood chipper having an infeed pan pivotally connected to an infeed hopper, which is raised and lowered by an operator to allow wood material to be placed on the infeed pan before entering the infeed hopper. The Background of the Invention section lacks at least one spring connected to a spring mount to operatively engage an infeed pan to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator. In the wood chipper of the Background of the Invention section, there is no spring to assist an operator in moving the infeed pan.

Neagu '736 merely discloses a level ride liftgate with ramping action platform having a torsion spring disposed about each pin to thereby counterbalance the weight of the

platform. Neagu '736 lacks at least one spring connected to a spring mount to operatively engage an infeed pan to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator. In Neagu '736, there is no infeed pan.

Jones '563 merely discloses a counterbalanced hinge in which a biasing force of a coil spring causes a tube member to partially support a hinge member as it pivots in both directions. Jones '563 lacks at least one spring connected to a spring mount to operatively engage an infeed pan to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator. In Jones '563, there is no infeed pan.

Holzhauser et al. '977 merely discloses an apparatus for mounting a document feeder on a copier/duplicator having a tension spring that counterbalances the weight of the document feeder as it pivots. Holzhauser et al. '977 lacks at least one spring connected to a spring mount to operatively engage an infeed pan to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator. In Holzhauser et al. '977, there is no infeed pan.

There is absolutely no teaching of a level of skill in the wood chipper art to include at least one spring mount connected to the wood chipper and at least one spring connected to the spring mount and to operatively engage the infeed pan. Contrary to the Examiner's opinion, it is not obvious to modify the wood chipper of the Background of the Invention section to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position.

Further, there is no motivation in the wood chipper art for modifying the wood chipper of the Background of the Invention section to assist an operator in moving a bulk weight of the infeed pan. Neagu '736, Jones '563, or Holzhauser et al. '977 are non-analogous and one in the wood chipper art would not look to these patents for motivation because they are not in the field in which the problem lies. The Examiner may not, because he doubts that the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in the factual basis. See In re Warner, 379 F. 2d 1011, 154 U.S.P.Q. 173 (C.C.P.A. 1967).

The references, if combinable, fail to teach or suggest the combination of a wood chipper including a movable infeed pan, at least one spring mount connected to the wood chipper, and at least one spring connected to the spring mount and to operatively engage the infeed pan to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator as claimed by Applicants.

Further, the CAFC has held that "[t]he mere fact that prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification". In re Gordon, 733 F.2d 900, 902, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984). The Examiner has failed to show how the prior art suggested the desirability of modification to achieve Applicants' invention. Thus, the Examiner has failed to establish a case of prima facie obviousness.

The present invention sets forth a unique and non-obvious combination of a wood chipper having at least one spring mount connected to the wood chipper and at least one spring connected to the spring mount to operatively engage the infeed pan. Advantageously, the wood

chipper has an assist assembly that has one or more springs positioned to counter the force of the bulk weight of the infeed pan to raise and lower the infeed pan smoothly.

Against this background, it is submitted that the present invention of claim 5 is not obvious in view of the allegedly admitted prior art, Neagu '736, Jones '563, and/or Holzhauser et al. '977. The references fail to teach or suggest the combination of a wood chipper of claim 5. Therefore, it is respectfully submitted that claim 5 is not obvious and is allowable over the rejection under 35 U.S.C. § 103.

Dependent claims 6 through 16 perfect and further limit independent claim 5. Claim 6 defines that the at least one spring is a coil spring. Claim 7 defines that the at least one spring has a first end extending outwardly and a second end extending outwardly to form a general "L" shape. Claim 8 defines that the at least one spring has a plurality of coils disposed between the first end and the second end. Claim 9 defines that the second end is longer than the first end, the second end being adapted to operatively engage the infeed pan. Claim 10 defines that the wood chipper includes a spring retainer connected to the infeed pan to space the second end from the infeed pan. Claim 11 defines that the wood chipper includes a plurality of spring mounts spaced laterally and secured to an infeed hopper assembly of the wood chipper. Claim 12 defines that the wood chipper includes a plurality of springs, one of the springs being mounted to one of the spring mounts. Claim 13 defines that the spring mounts and one of the springs is located adjacent the infeed pan. Claim 14 defines that the at least one spring mount is at least one side member extending from an infeed hopper assembly of the wood chipper. Claim 15 defines that the at least one spring mount is a support member extending from the at least one side member. Claim 16 defines that the support member is rotatably secured to the at least one side member. The claim language is to be read in view of the specification as it would be

interpreted by one of ordinary skill in the art. In re Morris, 127 F.3d 1048, 1053-54, 44 U.S.P.Q.2d 1023, 1027 (Fed. Cir. 1997). As such, there is no suggestion in the allegedly admitted prior art, Neagu '736, Jones '563, or Holzhauser et al. '977 to desire the modification to arrive at the claimed subject matter of claims 6 through 16. The mere fact that the prior art could be modified in a manner to arrive at the claimed subject matter does not make such a modification obvious unless the prior art suggested the desirability of the modification. See In re Gordon, 773 F.2d 900, 902, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984). Based on this, it is respectfully submitted that claims 6 through 16 are not obvious and are allowable over the rejection under 35 U.S.C. § 103.

Claims 17 through 23

As to independent claim 17, claim 17 claims the invention as a wood chipper (12) including an infeed hopper (14) and an infeed pan (24) pivotally connected to the infeed hopper (14). The wood chipper (12) also includes at least one assist mount (36) connected to the infeed hopper (14). The wood chipper (12) further includes at least one assist member (46) connected to the at least one assist mount (36) and connected to the infeed pan (24) and connected to the infeed hopper (14) to assist an operator in moving a bulk weight of the infeed pan (24) when the infeed pan (24) is raised to a generally vertical position and lowered to a generally horizontal position by the operator.

The references cited, either alone or in combination, do not teach or suggest the claimed invention of claim 17. Specifically, the Background of the Invention section of the present application merely discloses a wood chipper having an infeed pan pivotally connected to an infeed hopper, which is raised and lowered by an operator to allow wood material to be placed on the infeed pan before entering the infeed hopper. The Background of the Invention section

lacks at least one assist mount connected to an infeed hopper and at least one assist member connected to the assist mount and to the infeed pan and the infeed hopper to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator. In the wood chipper of the Background of the Invention section, there is no assist member to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator.

Neagu '736 merely discloses a level ride liftgate with ramping action platform having a torsion spring disposed about each pin to thereby counterbalance the weight of the platform. Neagu '736 lacks at least one assist mount connected to an infeed hopper and at least one assist member connected to the assist mount and to the infeed pan and the infeed hopper to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator. In Neagu '736, there is no infeed pan.

Jones '563 merely discloses a counterbalanced hinge in which a biasing force of a coil spring causes a tube member to partially support a hinge member as it pivots in both directions. Jones '563 lacks at least one assist mount connected to an infeed hopper and at least one assist member connected to the assist mount and to the infeed pan and the infeed hopper to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator. In Jones '563, there is no infeed pan.

Holzhauser et al. '977 merely discloses an apparatus for mounting a document feeder on a copier/duplicator having a tension spring that counterbalances the weight of the

document feeder as it pivots. Holzhauser et al. '977 lacks at least one assist mount connected to an infeed hopper and at least one assist member connected to the assist mount and to the infeed pan and the infeed hopper to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator. In Holzhauser et al. '977, there is no infeed pan.

There is absolutely no teaching of a level of skill in the wood chipper art that a wood chipper can be constructed with at least one assist mount connected to an infeed hopper and at least one assist member connected to the assist mount and to the infeed pan and the infeed hopper to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator. Further, there is no motivation in the wood chipper art for modifying the wood chipper of the Background of the Invention section to assist an operator in moving a bulk weight of the infeed pan. Neagu '736, Jones '563, or Holzhauser et al. '977 are non-analogous and one in the wood chipper art would not look to these patents for motivation because they are not in the field in which the problem lies. The Examiner may not, because he doubts that the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in the factual basis. See In re Warner, 379 F. 2d 1011, 154 U.S.P.Q. 173 (C.C.P.A. 1967).

Even if the reference could be combined, they do not teach a level of skill in the art of wood chippers of at least one assist mount connected to an infeed hopper and at least one assist member connected to the assist mount and to an infeed pan and the infeed hopper to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator. Applicants are

not attacking the references individually, but are clearly pointing out that each reference is deficient and, if combined (although Applicants maintain that they are not combinable), the combination is deficient. The present invention sets forth a unique and non-obvious combination of a wood chipper having at least one assist mount connected to an infeed hopper and at least one assist member connected to the assist mount and to an infeed pan and the infeed hopper to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator. Advantageously, the wood chipper has an assist assembly that assists the operator in handling the bulk weight of the infeed pan when it is raised or lowered.

The references, if combinable, fail to teach or suggest the combination of a wood chipper including an infeed hopper, an infeed pan pivotally connected to the infeed hopper, at least one assist mount connected to the infeed hopper, and at least one assist member connected to the assist mount and to the infeed pan and the infeed hopper to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator as claimed by Applicants.

Against this background, it is submitted that the present invention of claim 17 is not obvious in view of the allegedly admitted prior art, Neagu '736, Jones '563, and/or Holzhauser et al. '977. The references fail to teach or suggest the combination of a wood chipper of claim 17. Therefore, it is respectfully submitted that claim 17 is not obvious and is allowable over the rejection under 35 U.S.C. § 103.

Dependent claims 18 through 23 perfect and further limit independent claim 17. Claim 18 defines that the at least one assist member is a spring. Claim 19 defines that the at least one spring has a first end extending outwardly and a second end extending outwardly to form a

general “L” shape. Claim 20 defines that the at least one spring has a plurality of coils disposed between the first end and the second end. Claim 21 defines that the at least one assist mount is at least one side member extending from the infeed hopper. Claim 22 defines that the at least one assist mount is a support member extending from the at least one side member. Claim 23 defines that the support member is rotatably secured to the at least one side member. The claim language is to be read in view of the specification as it would be interpreted by one of ordinary skill in the art. In re Morris, 127 F.3d 1048, 1053-54, 44 U.S.P.Q.2d 1023, 1027 (Fed. Cir. 1997). As such, there is no suggestion in the allegedly admitted prior art, Neagu ‘736, Jones ‘563, or Holzhauser et al. ‘977 to desire the modification to arrive at the claimed subject matter of claims 18 through 23. The mere fact that the prior art could be modified in a manner to arrive at the claimed subject matter does not make such a modification obvious unless the prior art suggested the desirability of the modification. See In re Gordon, 773 F.2d 900, 902, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984). Based on this, it is respectfully submitted that claims 18 through 23 are not obvious and are allowable over the rejection under 35 U.S.C. § 103.

Claim 24

As to claim 24, claim 24 claims the invention as a wood chipper (12) including an infeed hopper (14) and a cutting assembly (18) spaced from the infeed hopper (14). The wood chipper (12) also includes a feed wheel assembly (17) disposed between the infeed hopper (14) and the cutting assembly (18) to feed wood material from the infeed hopper (14) to the cutting assembly (18). The wood chipper (12) includes an infeed pan (24) pivotally connected to the infeed hopper (14) and at least one assist mount (36) connected to the infeed hopper (14). The wood chipper (12) further includes at least one assist member (46) connected to the at least one assist mount (36) and to operatively engage the infeed pan (24) and to operatively engage the

infeed hopper (14) to assist an operator in moving a bulk weight of the infeed pan (24) when the infeed pan (24) is raised to a generally vertical position and lowered to a generally horizontal position by the operator.

The references cited, either alone or in combination, do not teach or suggest the claimed invention of claim 24. Specifically, the Background of the Invention section of the present application merely discloses a wood chipper having an infeed pan pivotally connected to an infeed hopper, which is raised and lowered by an operator to allow wood material to be placed on the infeed pan before entering the infeed hopper. The Background of the Invention section lacks at least one assist member connected to an assist mount and to operatively engage the infeed pan and the infeed hopper to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator. In the wood chipper of the Background of the Invention section, there is no assist member to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator. There is no suggestion or motivation for modifying the wood chipper of the Background of the Invention section.

Neagu '736 merely discloses a level ride liftgate with ramping action platform having a torsion spring disposed about each pin to thereby counterbalance the weight of the platform. Neagu '736 lacks at least one assist member connected to an assist mount and to operatively engage the infeed pan and the infeed hopper to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator. In Neagu '736, there is no infeed pan.

Jones '563 merely discloses a counterbalanced hinge in which a biasing force

of a coil spring causes a tube member to partially support a hinge member as it pivots in both directions. Jones '563 lacks at least one assist member connected to an assist mount and to operatively engage the infeed pan and the infeed hopper to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator. In Jones '563, there is no infeed pan.

Holzhauser et al. '977 merely discloses an apparatus for mounting a document feeder on a copier/duplicator having a tension spring that counterbalances the weight of the document feeder as it pivots. Holzhauser et al. '977 lacks at least one assist member connected to an assist mount and to operatively engage the infeed pan and the infeed hopper to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator. In Holzhauser et al. '977, there is no infeed pan.

There is absolutely no teaching of a level of skill in the wood chipper art to include at least one assist mount connected to an infeed hopper and at least one assist member connected to the assist mount to operatively engage the infeed pan and the infeed hopper to assist an operator in moving a bulk weight of the infeed pan. Further, there is no motivation in the art to modify the wood chipper of the Background of the Invention section to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator. Neagu '736, Jones '563, or Holzhauser et al. '977 are non-analogous and one in the wood chipper art would not look to these patents for motivation because they are not in the field in which the problem lies. The Examiner may not, because he doubts that the invention is patentable, resort to speculation,

unfounded assumptions or hindsight reconstruction to supply deficiencies in the factual basis. See In re Warner, 379 F. 2d 1011, 154 U.S.P.Q. 173 (C.C.P.A. 1967).

The references, if combinable, fail to teach or suggest the combination of a wood chipper including an infeed hopper, a cutting assembly, a feed wheel assembly disposed between the infeed hopper and a cutting assembly to feed wood material from the infeed hopper to the cutting assembly, an infeed pan pivotally connected to the infeed hopper, at least one assist mount connected to the infeed hopper, and at least one assist member connected to the assist mount and to operatively engage the infeed pan and the infeed hopper to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator as claimed by Applicants.

Further, the CAFC has held that “[t]he mere fact that prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification”. In re Gordon, 733 F.2d 900, 902, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984). The Examiner has failed to show how the prior art suggested the desirability of modification to achieve Applicants’ invention. Thus, the Examiner has failed to establish a case of prima facie obviousness.

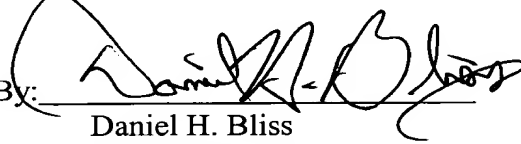
The present invention sets forth a unique and non-obvious combination of a wood chipper including at least one assist mount connected to an infeed hopper and at least one assist member connected to the assist mount to operatively engage the infeed pan and the infeed hopper. Advantageously, the wood chipper has an assist assembly that assists the operator in handling the bulk weight of the infeed pan when it is raised or lowered.

Against this background, it is submitted that the present invention of claim 24 is not obvious in view of the allegedly admitted prior art, Neagu ‘736, Jones ‘563, and/or

Holzhauser et al. '977. The references fail to teach or suggest the combination of a wood chipper of claim 24. Therefore, it is respectfully submitted that claim 24 is not obvious and is allowable over the rejection under 35 U.S.C. § 103.

In conclusion, it is respectfully submitted that the rejection of claims 1 through 24 is improper and should be reversed.

Respectfully submitted,

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CLAIMS APPENDIX

The claims on appeal are as follows:

1. A wood chipper comprising:
a movable infeed pan;
at least one assist mount connected to said wood chipper; and
at least one assist member connected to said assist mount and to operatively engage said infeed pan to assist an operator in moving a bulk weight of said infeed pan when said infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator.
2. A wood chipper as set forth in claim 1 wherein said at least one assist member comprises a spring.
3. A wood chipper as set forth in claim 1 wherein said at least one assist mount comprises at least one side member extending from an infeed hopper assembly of said wood chipper.
4. A wood chipper as set forth in claim 1 wherein said at least one assist mount further comprises a support member extending from said at least one side member, said at least one assist member being connected to said at least one support member.

5. A wood chipper comprising:
a movable infeed pan;
at least one spring mount connected to said wood chipper; and
at least one spring connected to said spring mount and to operatively engage said infeed pan to assist an operator in moving a bulk weight of said infeed pan when said infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator.
6. A wood chipper as set forth in claim 5 wherein said at least one spring is a coil spring.
7. A wood chipper as set forth in claim 5 wherein said at least one spring has a first end extending outwardly and a second end extending outwardly to form a general "L" shape.
8. A wood chipper as set forth in claim 7 wherein said at least one spring has a plurality of coils disposed between said first end and said second end.
9. A wood chipper as set forth in claim 7 wherein said second end is longer than said first end, said second end being adapted to operatively engage said infeed pan.
10. A wood chipper as set forth in claim 7 including a spring retainer connected to said infeed pan to space said second end from said infeed pan.

11. A wood chipper as set forth in claim 5 including a plurality of spring mounts spaced laterally and secured to an infeed hopper assembly of said wood chipper.

12. A wood chipper as set forth in claim 11 including a plurality of springs, one of said springs mounted to one of said spring mounts.

13. A wood chipper as set forth in claim 12 wherein one of said spring mounts and one of said springs is located adjacent said infeed pan.

14. A wood chipper as set forth in claim 5 wherein said at least one spring mount comprises at least one side member extending from an infeed hopper assembly of said wood chipper.

15. A wood chipper as set forth in claim 14 wherein said at least one spring mount further comprises a support member extending from said at least one side member.

16. A wood chipper as set forth in claim 15 wherein said support member is rotatably secured to said at least one side member.

17. A wood chipper comprising:
an infeed hopper;
an infeed pan pivotally connected to said infeed hopper;
at least one assist mount connected to said infeed hopper; and

at least one assist member connected to said at least one assist mount and connected to said infeed pan and connected to said infeed hopper to assist an operator in moving a bulk weight of said infeed pan when said infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator.

18. A wood chipper as set forth in claim 17 wherein said at least one assist member comprises a spring.

19. A wood chipper as set forth in claim 18 wherein said at least one spring has a first end extending outwardly and a second end extending outwardly to form a general "L" shape.

20. A wood chipper as set forth in claim 19 wherein said at least one spring has a plurality of coils disposed between said first end and said second end.

21. A wood chipper as set forth in claim 17 wherein said at least one assist mount comprises at least one side member extending from said infeed hopper.

22. A wood chipper as set forth in claim 21 wherein said at least one assist mount further comprises a support member extending from said at least one side member.

23. A wood chipper as set forth in claim 22 wherein said support member is rotatably secured to said at least one side member.

24. A wood chipper comprising:

an infeed hopper;

a cutting assembly spaced from said infeed hopper;

a feed wheel assembly disposed between said infeed hopper and said cutting assembly to feed wood material from said infeed hopper to said cutting assembly;

an infeed pan pivotally connected to said infeed hopper;

at least one assist mount connected to said infeed hopper; and

at least one assist member connected to said at least one assist mount and to operatively engage said infeed pan and to operatively engage said infeed hopper to assist an operator in moving a bulk weight of said infeed pan when said infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator.

EVIDENCE APPENDIX

None

RELATED PROCEEDINGS APPENDIX

None